

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

In the matter of an application in terms of Articles 17 and 126 of the Constitution of
the Democratic Socialist Republic of Sri Lanka.

SC/FR-Application No.565/2000

M.K. Prasanna Chandralal,
Attorney-at-Law
44A 2/1 Dickmons Road,
Colombo 05.

On behalf of

Dalkadura Arachchige Nimal Silva Gunaratna,
of Arthur Gunathilaka Mawatha, Kalamulla, Kalutara South,

(Presently detained at SP Office Panadura and Police Station, Panadura)

Petitioner

Vs.

1. ASP Ranmal Kodituwakku,
Panadura ASP's Office,
Pananadura.
2. SI Kodituwakku,
Panadura ASP's Office,
Pananadura.
3. SI Dharmasena,
Pnanadura ASP's Office, Panadura.
4. SI Lakshman,
Panadura ASP's Office,
Pananadura.

5. PC Bandara,
Panadura ASP's Office,
Panadura.
6. PC Ranjan
Panadura ASP's Office,
Panadura.
7. Officer in Charge,
Panadura Police Station, Panadura.
8. Inspector General of Police,
Police Head Quarters, Colombo.
9. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before :-

S.N. Silva, CJ

C.N. Jayasinghe, J.

Shiranee Tilakawardene, J.

Counsel:

S .L Gunasekera with Ms. Priyadarshini Dias for the Petitioner.

D.S. Wijesinghe, P.C., With Sanjeewa Jayawardena for the 1st & 6th Respondents.

D.P. Kumarasinghe, P.C. with L. Bulathsinghalage for the 2nd to 7th Respondents.

Harsha Fernando, S.S.C., for the 8th & 9th Respondents.

Argued on:
03.09.2004.

Decided on:
1.11.2005.

Written submissions of the Petitioner tendered on:
14.10.2004

Written submissions of the Respondents tendered on:
02.11.2004.

Jayasinghe, J.

The petitioner an Attorney-at-Law preferred this application on behalf of the virtual petitioner Dalkadura Arachchige Nimal Silva Gunaratne after having obtained instructions from the said virtual petitioner and also on the material and information supplied to the petitioner by the family members of the said virtual petitioner and more particularly on the complaint made to the Human Rights Commission on 27.07.2000. The virtual petitioner thereafter filed affidavit dated 30.03.2001, while restating the facts set out in the petition sought: to answer the averments in the affidavits of the respondents. The virtual petitioner states that at about 4.30 p.m. on 19.06.2000 while he was with a friend named Denzil, about 10 police officers led by the 1st respondent arrived in a police jeep surrounded the house of the said Denzil, took the virtual petitioner into custody. The virtual petitioner says that the police officers tied his hands to his back with a rope and also the hands of the said Denzil. The 2nd respondent at the time of causing the arrest assaulted the virtual petitioner. The arresting officers did not produce a search warrant nor the reasons for the arrest was disclosed. They put both the virtual petitioner and the said Denzil into the jeep and whilst the virtual petitioner was in the jeep he was subject to assault. After having proceeded a distance, the said Denzil was released. The virtual petitioner says that the 2nd respondent took the virtual petitioner to the ASP's Office, Panadura where he was held incommunicado for a period of three days handcuffed to a bed without any food or water. No toilet facilities were provided either. His family was permitted to see him on the 22nd June, but was not allowed to speak to him. He states that between the period 19.06.2000 and 09.07.2000 he was subjected to severe assault, He has averred that while he was being held at the said ASP's Office one Thushan Siha was also being subjected to severe assault by police officers. He saw the said Thushan Silva being suspended from a rafter on the roof and that the said Thushan Silva slipped and fell about three times. He has stated that while Thushan was being assaulted he too was assaulted with clubs, He identifies PC Sarath among those who

assaulted him, says he was dragged about 100 meters to a place where there were about 10 other detainees. He was also assaulted by 2, 3, 4 and 6th respondents and a blow inflicted by the 4th respondent struck his eye causing profuse bleeding. He lost his sight. The 4th and 6th respondents continued to assault the virtual petitioner. The virtual petitioner also states that he also saw Sunil Silva Gunaratne and Susil Silva lying helpless. He was then hanged from a rafter, with a piece of lace tied to his fingers. He fell and was unconscious. When he gained consciousness he saw the 2nd 4th and 6th respondents near him. The virtual petitioner states that the respondents did not seek to obtain any medical assistance to the injury that has been caused to his eye. He was taken to the Eye Hospital on 10.07.2000 after having been taken, to the Panadura Hospital on two previous occasions. No meaningful steps were taken even though the medical officer advised the hospitalization of the virtual petitioner immediately. He states that the day after his arrest his mother had complained to the President's Committee on Unlawful Arrest and Harassment regarding his arrest, assault and detention, He states that while he was warded at the Eye Hospital that he made a detailed statement to the Human Rights Commission on 27.07.2000 The virtual petitioner complains that due to the unlawful arrest he was denied of his, right and freedom to be engaged in his business of tapping toddy; that the employees had been specifically threatened by the 1st respondent to refrain from working for the petitioner and as a result the petitioner was not able to engage in his lawful occupation. The virtual petitioner prayed for a declaration that the 1st to 6th respondents have violated his constitutional rights guaranteed under Article 11, 12(1), 130)13(2) and 14(I)(g) of the Constitution. Court after hearing submissions of Counsel granted leave to proceed.

The 1st respondent filed objections. Denied that the virtual petitioner was arrested on 19.06.2000 as alleged. The 1st respondent also denied assault. The 1st respondent in his affidavit had stated that the virtual petitioner is an undesirable element who has terrorized the Panadura area; that several members of the underworld gang to which the virtual petitioner belonged had also been arrested between 05.05.2000 — 14.06,2000 by the unit headed by the 1st respondent which is called the Quick Response Unit. The 1st respondent submitted that to the best of his knowledge and belief the persons who were in custody at the time are relatives of the petitioner and constitutes an underworld gang. The petitioner could not be arrested as he has gone into hiding and that he was arrested on information on 08.07.2000. The 1st respondent also produced extracts from the information book to demonstrate to Court the daily routine of the 1st respondent to support his position that no arrest could have been made on 19th June. The 1st respondent has also stated that a private informant had furnished credible information regarding the activities of the underworld "mafia gang"

that had engaged in numerous contract killings and Various other heinous crimes and that the virtual petitioner who is also known as Bole/Chuti is a leading member of the said gang. That the Paiyagala area from where the petitioner and his gang operates has been gripped by a fear psychosis due to the proliferation of criminal activity including murder, rape, extortion, bribery, blackmail, robbery, theft, sale of weapons, drug peddling, manufacturing bombs and armaments etc. The 1st respondent says that since the establishment of the Quick Reaction Unit, the said unit has been responsible for numerous detections and apprehensions of notorious underworld criminals and have recovered number of weapons and explosives. The 1st respondent has itemized proceedings instituted against the virtual petitioner. The 1st respondent states around 03.07,2000 at about 11.30 hours upon information received at the Panadura Police Station that the complainant could be found at the house of a toddy tapper named Amaradasa and acting on the said information the Quick Response Unit comprising of the 2nd, 3rd and 4th respondents along with 4 Constables one S.I. Liyanage and Police driver had left the police station to secure the said arrest of the virtual petitioner. The virtual petitioner was seen running away on seeing the police party in an obvious bid to escape investigation and apprehension, made his escape into the surrounding dense shrub jungle. Pursued by the police party the virtual petitioner has stumbled and fallen and thereupon the petitioner and was subdued and taken into custody. The said police team had observed that the virtual petitioner had sustained the injury complained of around his right eye while attempting to escape through the dense jungle. The 2nd respondent informed the virtual petitioner the reason for the arrest and the petitioner's wife was informed of the arrest of the virtual petitioner with an unlicensed revolver and live ammunition. That he would be taken to the Panadura Police Station for the purpose of effecting a full investigation into the activities of the underworld gang operating in the area of which the virtual petitioner is a leading member. He was then produced before the District Medical Officer by the 3rd respondent at 1440 hours.

The other respondents associated themselves with the averments contained in the affidavit and the written submissions of the 1st respondent.

The pivotal issue for determination by this Court is the date of arrest It is the position of the virtual petitioner that he was arrested by a police party consisting of about 10 police officers led by the 1st respondent on 19. 06. 2000 along with one Denzil. The virtual petitioner complained that the reason for the arrest was not disclosed; that he was thereafter taken to the office of the ASP Panadura.

Counsel for the petitioner submitted that there is a wealth of evidence to support the virtual petitioner's contention that he was in fact arrested on the 19 06 2000 and not on 08.07.2000 as claimed by the respondents.

The virtual petitioner's mother Lendiris Harny made a written complaint to Her Excellency the President on 20 06 2000 complaining of the arrest and detention of her sons including the virtual petitioner and five of her grandsons. In the said letter she was specific that the virtual petitioner was arrested on 19.06.2000. This letter has been date stamped 20.06.2000 and marked P3a. The virtual petitioner's wife also complained to the Human Rights Commission on 03.07.2000 alleging that the Petitioner has been arrested on 19.06.2000 – P11. The virtual petitioner's wife also complained to the Human Rights institute on 03.07.2000 that the virtual petitioner has been arrested on 19.06.2000 - P9. She also complained to the Police Head Quarters on 28.09. 2000 that the virtual petitioner was arrested on 19.06.2000. - P7. The virtual petitioner himself wrote to the Human Rights Commission on 27.07.2000 and 28.09.2000 alleging that he was arrested on 19:06.2000. However the most convincing evidence that the arrest was on 19.06.2000 emanates from one S.A.M. Jiffery, who in a statement totally unrelated to the arrest of the virtual petitioner has made reference to the presence of the virtual petitioner at the Panadura Police in his complaint to the Human Rights Commission on 07.07.2000 of unlawful arrest and torture by the Panadura Police for the recovery of weapons he is alleged to have been possessing unlawfully. The said Jiffery had stated that whilst in custody of the Panadura Police he had seen a person named Nimal who had stated that he has lost sight of one, of his eyes while in the custody of the Panadura Police. The investigation officer Arampath giving evidence before the Human Rights Commission has also stated that the 1st respondent had confirmed on 05.07.2000 that the virtual petitioner was being held on a detention order at the Panadura Police Station. In the context of this evidence I am unable to accept the respondents position that the conduct of the virtual petitioner's mother and wife was to preempt the imminent arrest of the virtual petitioner. I accordingly hold that the evidence placed before this Court supports the virtual petitioners' position that he was in fact arrested on 19.06.2000 and not on 08.07.2000 as claimed by the respondents.

Mr. S .L. Gunasekera for the petitioners submitted that in any event the arrest of the petitioner was not in accordance with the procedure established by law in that the arresting officer could not have been able to give the virtual petitioner the reason for his arrest, as the allegation against the virtual petitioner was vague. He relied on ***Piyasiri vs. Fernando 1988 1 SLR 173*** where it was held that no police officer has the right to arrest a person on vague general suspicion not knowing the crime suspected. The

respondents who were concerned in the escalation of crime in the area arrested a number of persons who are members of an alleged unlawful gang which terrorized the area and that upon the arrest of the members of the said gang material information relating to the activities of the virtual petitioner was collated. The fact that the petitioner was in hiding suggest that he had been aware that the police were looking for him for the alleged participation in several crimes for which the respondents sought to secure his arrest. I am unable to accept the submission that allegation against the virtual petitioner is vague and that no arrest could have been made on the material available. Mr. Gunasekera also relied on ***Vinayagamoorthy vs. Army Commander and others (1997) 1 SLR 113*** where it was held "in deciding whether the arrest was in accordance with the procedure established by law the matter in issue is not what subsequent investigations revealed, but whether at the time of the arrest the person was committing an offence, or that there were reasonable grounds for suspecting that the person arrested was concerned in or had committed an offence".

The written submissions of the virtual petitioner in fact refers to a number of cases which the virtual petitioner allege are fabrications. There was however a well founded suspicion that the virtual petitioner was concerned in the commission of such offences. The virtual petitioner has not sought even to suggest why the Police would want to fabricate cases against him. The material available to the respondents, to my mind was quite adequate to cause the arrest of the virtual petitioner. But the concern here is not whether there was well founded suspicion for the arrest; but whether the arrest was according to the procedure established by law. Since the respondents deny that the arrest was on 19.06.2000 and as the evidence is to the contrary, a declaration for the infringement of Article 13(1) is inevitable.

Since I have rejected the respondent's claim that the arrest of the virtual petitioner was on 03.07.2000, the detention of the virtual petitioner from 19.06.2000 to 03.07.2000 the date on which the detention order was obtained was unlawful and consequently attracts a declaration that the constitutional rights guaranteed under Article 13(2) is also infringed.

The virtual petitioner also alleged that he was subjected to torture and degrading treatment.

The virtual petitioner in his affidavit filed before this Court and in the statement made to the Human Rights Commission is very descriptive of the manner in which he was assaulted whilst under detention. The medical evidence produced before this Court by the JMO and the Eye Hospital on the direction issued by this Court supports the virtual petitioner's allegation of assault and the disfiguration of the right eye. It is unnecessary to dwell at

length on the injuries suffered by the virtual petitioner. The Report of the JMO dated 10 11 2000 and the medical report of Dr. Saliya Pathirana Consultant Ophthalmologist Eye Hospital, Colombo and treatment record of the Eye Hospital is conclusive evidence of the injuries suffered by the complainant. In *Anal Sudath Silva vs. Kodituwakku* 1987 2 SL1? 119 it was held that "Article 11 of the Constitution prohibits every person from inflicting torturous cruel or inhuman treatment on another. It is an absolute fundamental right subject to no restriction or limitation whatsoever. Every person in the country be he a criminal or not, is entitled to his right to the fullest content of its guarantee. Constitution safeguards are generally directed against the State and its organs. The police force, being an organ of the State, is enjoined by the Constitution to secure and advance this right and not to deny, abridge or restrict the same in any manner and under any circumstances. Just as much as this right is enjoyed by every member of the police force, so is he prohibited from denying the same to others, irrespective of their standing, their belief or antecedents. It is therefore the duty of this court to protect and defend this right jealously to its fullest measure with a view to ensuring that this right which is declared and intended to be fundamental is always kept fundamental and that the executive by its action does not reduce it to a mere illusion." I accordingly hold that the virtual petitioner has been subjected to torture whilst in police custody and hence the allegation of infringement of Article 11 is sustainable.

The virtual petitioner has also alleged that due to, the unlawful arrest he was unable to engage in his lawful occupation. The respondents entertained well founded suspicion that the virtual petitioner was concerned in committing number of offences of murder etc. referred to above. There were at least five cases in which the virtual petitioner has been produced as a suspect and was discharged for want of evidence against him. That all these cases are fabrications against the virtual petitioner to my mind is a far cry. As a matter of fact he was arrested with an unlicensed Revolver and live ammunition, His brothers and nephews were already in custody at the time of his arrest and the virtual petitioner himself was liable to be arrested by the respondents. As such the resulting situation would have been loss of employment/income for his inability to engage in his lawful occupation and the virtual petitioner would not have had a cause to complain. Where the arrest was not according to law, allows this Court to grant the virtual petitioner a declaration that the respondents have acted in breach of his constitutional rights guaranteed under Article 13(1). Infringement of Article 14(i)(g) does not necessarily follow from a violation of Article 13(1). Where there is an allegation of a violation of Article 14(1)(g) consequent upon a violation under 13(1) and 13(2) such allegation has to be determined on the circumstances of each case. I do not think that the virtual petitioner can rightfully claim that his rights guaranteed under 14(i)(g) has been infringed

in view of the circumstances that surrounds the arrest especially when the respondents entertained well founded suspicion that he was concerned in the commission of number of offences. The lapse on the part of the respondents in not conforming to Article 13(1) and 13(2) cannot entitle to the benefit of the virtual petitioner to claim a declaration under 14(f)(g). That the respondents have infringed the virtual petitioners rights guaranteed under Article 14(1)(g) therefore cannot be sustained,

It is the position of the 1st respondent that he did not participate in the arrest of the virtual petitioner as alleged. The 1st respondent denied that the arrest was in fact on 19.06.2000. The 1st respondent stated that as an Assistant Superintendent of Police his orders are handed down to the subordinates who carry them out. He maintains that the arrest was in fact on 08.07.2000. The 1st respondent has produced documentation to establish his movements on 19.06,2000 and information Book Extracts to show that on 19.06.2000 he was conducting an inquiry into an alleged theft of gold jewellery. He has also produced the running chart in respect of his vehicle to support his movements on the 19.06.2000. Even though I hold that the arrest was in fact was made on 19.06.2000 I am satisfied on the material before Court that the 1st respondent was not concerned in the arrest as alleged by the virtual petitioner. It is my view that the material made available to Court no order can be made against the 1st respondent that he breached the rights guaranteed to the petitioner under Article 1. (1) and 13 (2). There is also no specific allegation that the 1st respondent was concerned in the assault and torture of the virtual petitioner. I therefore hold that the 1st respondent be absolved of violation of Articles 11,13 (1), 13 (2) and 14(1)(g).

I have to now consider carefully the allegation against the other respondents regarding the arrest of the virtual petitioner and the alleged assault, torture and degrading treatment. The virtual petitioner complains that the injury to his eye was caused by the 4th respondent and that such injury according to the virtual petitioner himself was accidental. There is however no excuse for causing any injury to a suspect whilst in custody deliberately or by accident.

I am satisfied on the material placed before Court that the arrest of the virtual petitioner by the Panadura Police was unlawful and that the injuries complained of by the virtual petitioner were sustained while in the custody of the Panadura Police. The conduct of the 2nd, 3rd, 4th and 6th respondents therefore cannot be ignored. I accordingly order the 8th respondent to pay the virtual petitioner a sum of Rs.50,000/- as compensation for the infringement of Articles 11, 13(1) and 13(2) of the Constitution. The 4th respondent in addition shall pay the virtual petitioner a sum of Rs.5000/- as compensation. Since no submissions were made in respect of an infringement under Article 12 (1) I make no order.

The petitioner is entitled to a further sum of Rs.20,000/- as costs to be paid by the 8th respondent.

S.N. Silva CJ

Tilakawardena J

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